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FEDERAL TRADE COMMISSION

16 CFR Part 429

RIN: 3084-AB10

Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends the Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations (“Cooling-Off Rule” or “Rule”). The final Rule adopts with modifications the Commission’s proposal to increase the exclusionary limit for all door-to-door sales. Under the final Rule, the revised definition of “door-to-door sale” distinguishes between sales at a buyer’s residence and those at other locations. First, the revised definition retains coverage for sales made at a buyer’s residence that have a purchase price of \$25 or more. Second, the revised definition covers sales at other locations that have a purchase price of \$130 or more.

DATES: This rule is effective on March 13, 2015.

ADDRESSES: Requests for copies of this document are available on the Commission’s website, www.ftc.gov.

FOR FURTHER INFORMATION CONTACT: Sana Coleman Chriss, Attorney, (404) 656-1364, Federal Trade Commission, Southeast Region, 225 Peachtree Street, N.E., Suite 1500, Atlanta, Georgia 30303.

SUPPLEMENTARY INFORMATION:

I. Background

A. Cooling-Off Rule Summary

The Cooling-Off Rule is a trade regulation rule that was promulgated by the Commission in 1972 to address unfair and deceptive practices in sales conducted at locations other than the place of business of the seller (“door-to-door sales”). In addition to sales at consumers’ homes, door-to-door sales include sales at facilities rented on a temporary or short term basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants; or sales at the buyer’s workplace or in dormitory lounges. The Rule requires door-to-door sellers to provide consumers with written and oral notice of a buyer’s right to unilaterally rescind a contract within three business days from the date of the transaction.¹ Additionally, such sellers must provide buyers with a completed receipt, or a copy of the sales contract, containing a summary notice informing buyers of the right to cancel the transaction.²

B. Procedural Background

In 2009, the Commission initiated a regulatory review of the Cooling-Off Rule, as it does periodically with all of its rules and guides, to determine whether the Rule should be retained, modified or rescinded.³ To make this determination, the Commission sought comment on the

¹ Door-to-door sellers must provide buyers with a completed cancellation form, in duplicate, captioned either Notice of Right to Cancel or Notice of Cancellation, in accordance with the requirements and language provided in 16 CFR 429.1(b). Duplicate copies are required so that consumers can return one notice and retain the other should they need to effect cancellation. Oral notice is required pursuant to 16 CFR 429.1(e).

² 16 CFR 429.1(a).

³ *Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations*, Request for Public Comment, 74 FR 18170 (April 21, 2009). The Commission also conducted reviews in 1998 and 1995. *Rule on Cooling-Off Period for Door-to-*

economic impact of the Rule, the need for the Rule, any possible conflicts between the Rule and state, local, or other federal laws or regulations, and the effect on the Rule of any technological, economic, or other industry changes. Finding that the Rule continues to serve a valuable purpose in protecting consumers, the Commission retained the Rule and concluded its regulatory review.⁴ At the same time, the Commission sought public comment on a proposed increase from \$25 to \$130 in the exclusionary limit set forth in the Definitions section of the Rule.⁵ Under the proposed revision, the Rule's definition would have covered door-to-door sales with a purchase price of \$130 or more.

In seeking comment, the Commission posed six questions: (1) whether the Rule's \$25 exclusionary limit should be increased to account for inflation since the Rule was first promulgated in 1972 and to exempt from the Rule's coverage sales, leases, or rentals of consumer goods or services with a purchase price of less than \$130, whether under single or multiple contracts; (2) what types of transactions would become exempt from the Rule as a consequence of the increase; (3) whether transactions intended to be covered by the Rule when originally adopted in 1972 would become exempt as a result of the increase; (4) how the increase would impact the benefits the Rule currently provides to consumers and commerce; (5) how the increase would impact the burdens or costs the Rule currently imposes on sellers subject to the

Door Sales, 53 FR 45455 (Nov. 10, 1988); *Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations*, 60 FR 54180 (Oct. 20, 1995). In the 1995 proceeding, the Commission determined, among other issues, that the Rule should continue to apply to sales occurring in places other than a consumer's home. *Id.* at 54183.

⁴ *Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations*, Proposed Rule Amendment; Request for Public Comment, 78 FR 3855 (Jan. 17, 2013).

⁵ *Id.*

Rule’s requirements; and (6) whether the increase would impact the enforcement of state laws and municipal ordinances.⁶

After careful consideration of the record, the Commission has decided to retain the exclusionary limit of \$25 for door-to-door sales made at a buyer’s residence, but amend the Rule to increase from \$25 to \$130 the exclusionary limit applicable to all other door-to-door sales made at a place other than a buyer’s residence.

II. Basis for Final Rule and Analysis of Public Comment

The Commission received a total of 33 public comments from a broad range of groups and individuals.⁷ Commenters included representatives from Better Business Bureaus (“BBBs”); the California Consumer Affairs Association (“CCAA”), which is a statewide association of government agencies and nonprofit organizations; the Attorney General of the Commonwealth of Massachusetts (the “Massachusetts AG”); the Direct Selling Association (“DSA”), which is a trade association of manufacturers and distributors that directly sell goods and services to consumers primarily in the home; and consumer advocates. The comments discussed three issues: (1) the exclusionary limit; (2) the Rule’s effect on state laws; and (3) the Rule’s receipt requirement and sellers’ guarantee and return policies.

A. The Exclusionary Limit

The majority of commenters stated that the \$25 exclusionary amount should not be increased. The most uniform concern raised by commenters opposing the increase was the risk

⁶ *Id.* at 3860.

⁷ Comments are available on the Commission’s website at: www.ftc.gov.

of unfair or deceptive sales practices occurring within consumers' homes.⁸ For example, comments from the Massachusetts AG indicated that \$25 is not an insignificant amount, especially in the residential context, where borrowers who may never have expressed an interest in a product are confronted in their own home by a seller who attempts to convince them to purchase a product.⁹ Similarly, other commenters discussed aggressive traveling sellers in consumers' neighborhoods seeking to deceptively solicit consumers within their homes.¹⁰ A few commenters suggested that some consumers feel pressured to enter into contracts with door-to-door salesmen solely to get the salesmen to leave their homes.¹¹

Several commenters expressed concern that increasing the exclusionary amount could exempt door-to-door sellers of multilevel marketing ("MLM") distribution opportunities and sales of associated "start-up kits" to prospective distributors.¹² One commenter stated that these

⁸ See e.g., Massachusetts AG at 1 (urging the FTC to maintain the exclusionary limit at \$25 and stating that "The Commonwealth recognizes that \$25 is worth less, in real terms, than it was in 1972, when 16 CFR Part 429 was enacted. Nevertheless, the Commonwealth does not believe that \$25 is an insignificant amount, *especially in the door-to-door context, where borrowers who may never have expressed an interest in a product are confronted in their own home by a salesman who attempts to convince them to purchase a product.*") (emphasis added); Halbe at 1 (describing pushy, aggressive salesmen roving through her neighborhood); BBB of Southern Colorado at 1 (inferring that consumers are threatened or deceived into signing contracts to get sales persons to leave consumers' homes); BBB of Utah at 1; BBB of North Alabama at 1 (stating that "Door to door sales targets [sic] every homeowner who opens their door. Without a low threshold you will see more consumers loose [sic] more money to the crooks who walk through the neighborhoods."); Ellenbecker at 1 (expressing concern about deceptive travelling salesmen).

⁹ Massachusetts AG at 1.

¹⁰ BBB of North Alabama at 1; Halbe at 1; Ellenbecker at 1.

¹¹ BBB of Southern Colorado at 1; BBB of Utah at 1.

¹² Barrett at 1; Bosley at 1; Brooks at 2-3; Fitzpatrick (for Pyramid Scheme Alert) at 1; Taylor (for the Consumer Awareness Institute) at 1. See also Christian (stating that the cooling-off period for distributors should be one month instead of three days). According to DSA, a

start-up kits typically cost \$99 and that raising the threshold amount would exempt sale of the kits from the Rule.¹³ The commenter asserted that start-up kit sales should be covered by the Rule, because the sales cause these individuals to become committed to the MLM opportunity when, in reality, most of these individuals are likely to lose their investments.¹⁴

A few commenters supported the proposed increase. DSA, for example, stated that increasing the exclusionary limit to \$130 would be appropriate, while also noting the continuing value of the Rule.¹⁵ DSA stated that increasing the exclusionary limit would continue to provide consumers with the right to cancel high-dollar value purchases within three days. DSA also stated that the proposed increase would reduce the burden on sellers of lower-cost items because such sellers would not be required to provide duplicate receipts and oral disclosures.

The Commission concludes that the record supports retaining the \$25 exclusionary limit for door-to-door sales made within consumers' homes. The record reflects significant concern among the majority of commenters about high-pressure sales tactics and deception occurring during in-home solicitations. These concerns echo many of the same in-home sales concerns expressed by the Commission when it promulgated the Rule in 1972. The unfair and deceptive

start-up kit usually includes items such as samples, catalogs, order forms and other tools that help the individual begin selling. "The Difference Between Legitimate Direct Selling Companies and Illegal Pyramid Schemes," Direct Selling Association, available at <http://www.dsa.org/ethics/legitimatecompanies.pdf>.

¹³ Brooks at 2 (citing information found at <http://www.dsa.org/ethics/legitimatecompanies.pdf>).

¹⁴ *Id.* at 2-3.

¹⁵ DSA at 2; Rothacker at 1. In addition, two other commenters provided brief statements in support of an inflationary adjustment of more than the proposed \$130. Schafer at 1 (stating "maybe \$500 or \$1,000 should be the threshold if it needs to stay"); Kellam at 1 (stating that "For further consideration, the limit should be increased to \$200 to allow for inflation in the next two to five years.").

sales practices identified at that time included: (1) deception by salesmen in getting inside the door, (2) high pressure sales tactics, (3) misrepresentation as to the quality, price, or characteristics of the product, (4) high prices for low-quality merchandise, and (5) the nuisance created by the visit to the home by the uninvited salesmen.¹⁶ The Commission concludes that retaining the \$25 exclusionary limit for in-home sales is warranted to prevent the types of unfair and deceptive practices that gave rise to the Rule, and that an inflationary adjustment with respect to in-home sales would leave consumers without adequate protection under the Rule. Accordingly, the Commission is retaining the \$25 exclusionary limit for such sales.

The Commission, however, has determined to amend the Rule to increase the limit to \$130 for door-to-door sales made away from consumers' residences. The record does not reflect the same level of concerns about problematic practices when sales are made at other locations. In addition, the Commission is cognizant of costs of complying with the Rule. As stated in the record, because of price increases over time, more items are now covered by the Rule.¹⁷ This results in compliance burdens for sellers of lower cost goods. For example, while the Rule does not exempt souvenir vendors and sellers of perishable food at farmers' markets, increasing the threshold amount for sales at other locations could relieve these types of vendors from providing cancellation notices in connection with lower-dollar sales. The Commission concludes that increasing the exclusionary limit to \$130 for sales made away from a consumer's residence will reduce compliance burdens for sellers of lower cost goods, while continuing to provide consumers with the Rule's protections for higher-dollar value purchases.

¹⁶ *Cooling-Off Period for Door-to-Door Sales, Trade Regulations Rule and Statement of Basis and Purpose*, 37 FR 22933, 22937 (Oct. 26, 1972).

¹⁷ DSA at 2.

With respect to transactions involving MLM start-up kits, the Commission notes that whether such transactions are covered by the Rule is a fact-specific inquiry that depends on whether the particular transaction is a “sale, lease or rental of consumer goods or services.”¹⁸ To the extent such a transaction would be covered under the final Rule, the location of the transaction would govern whether the \$25 exclusionary amount or the \$130 exclusionary amount would apply.

B. The Rule’s Effect on State Laws

Some commenters expressed concern about how the proposed increase would affect state cooling-off laws. DSA commented that the increase in the exclusionary limit would not impact the enforcement of state laws and municipal ordinances.¹⁹ CCAA offered a different view, stating that if the Rule raises the exclusionary amount to \$130, unscrupulous door-to-door sellers could challenge a state cooling-off rule law and similar statutes, although CCAA did not discuss the likely basis for any such challenges.²⁰

The Commission finds that raising the threshold limit for door-to-door sales made away from a consumer’s home should not adversely impact state laws. Section 429.2 of the Rule, which remains unchanged, provides that state laws are preempted only to the extent that such laws are “directly inconsistent” with the Rule. State laws that have either lower exclusionary limits of \$25 or less, or no exclusionary limit at all, are not “directly inconsistent” with the Rule, and therefore would not be preempted on this ground. It is possible for sellers to comply with

¹⁸ See 16 CFR 429.0(a); 429.0(b) (defining “consumer goods or services” as “goods or services purchased, leased, or rented primarily for personal, family, or household purposes, including courses of instruction or training regardless of the purpose for which they are taken”).

¹⁹ DSA at 3.

²⁰ CCAA at 1.

the Rule when they make door-to-door sales of \$130 or more away from a consumer's home, and to also comply with state laws governing sales of smaller amounts.

C. Receipt Requirement and Sellers' Guarantee and Return Policies

DSA repeated a comment made during the 2009 rule review about the requirement that sellers provide consumers with two copies of the sales receipt and the mandated cancellation notice. DSA states that providing duplicate receipts imposes a burden on door-to-door sellers that is no longer necessary because orders and cancellations are frequently made over the telephone and the Internet.²¹ The Commission disagrees. The duplicate receipt and notice required by the Rule is beneficial to consumers, and based on the comments provided, may even have greater significance for consumer populations that may be targeted by door-to-door sales, such as the elderly.²² Further, the Commission notes that the Rule does not expressly address electronic methods by which a seller might comply with the Rule's duplicate receipt and notice requirement. Whether and how other laws, such as the Electronic Signatures in Global and National Commerce Act ("ESIGN"),²³ may provide electronic means that could be used to meet the duplicate receipt and notice requirement, or other Rule requirements, would depend on a case-by-case analysis of the specific legal and factual circumstances. Finally, the Rule does not apply if a transaction is conducted and consummated entirely by mail or telephone – and the

²¹ DSA at 3.

²² These consumer populations may be less likely to have affordable access to photocopiers and electronic devices. The duplicate receipt and notice requirement avoids imposing additional expense on consumers who would need to access copier machines and other electronic devices in order to preserve a record of their right to cancel. *See Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations*, Proposed Rule Amendment; Request for Public Comment, 78 FR 3855, 3862 (Jan. 17, 2013).

²³ 15 U.S.C. 7001-7006.

Commission interprets the Rule to similarly not apply to transactions conducted and consummated entirely over the Internet – as long as there is not any other in person contact between the buyer and seller or its representative prior to the delivery of goods or the performance of services.²⁴

DSA also repeated its 2009 comment that providing notice of both Cooling-Off Rule cancellation rights and a company's cancellation and return policy can be confusing to consumers when they provide for different cancellation, guarantee, or return policies.²⁵ DSA reiterated its recommendation that the Commission permit companies to substitute the Rule's language with their own guarantee or return policies, which policies, according to DSA, often provide consumers with greater protections than the Rule.²⁶ The Commission is not adopting DSA's recommendation because any potential confusion that consumers face with multiple options for cancellation is counterbalanced by the need to have a federally enforceable minimum amount of time for which consumers may cancel door-to-door sales. Without a federally required minimum, consumers' cancellation rights could be subjected to negotiation in high-pressure, deceptive door-to-door sales, which could result in more onerous cancellation and other requirements for consumers.

III. Regulatory Flexibility Act Certification and Regulatory Analysis

The final amendment to the Commission's Cooling-Off Rule announced in this notice will increase from \$25 to \$130 the exclusionary limit for door-to-door sales made away from a buyer's residence. Given concerns raised by commenters about problematic practices occurring

²⁴ See 16 CFR 429.0(a)(4).

²⁵ DSA at 3.

²⁶ *Id.*

within consumers' homes, the final amendment will not increase the exclusionary limit for sales made at a buyer's residence. The final amendment will reduce compliance burdens for regulated sellers who will no longer be required to provide Notices of Cancellation for door-to-door sales made away from a buyer's residence, unless the purchase price of the sale is \$130 or more. Moreover, the final amendment will not impose upon any regulated sellers new notice or other requirements. As a result, the Commission believes the economic impact of the final amendment will be minimal and that it will not have an adverse economic impact on regulated sellers or consumers. As reflected in this proceeding and in the Commission's experience, door-to-door sellers are often small entities. Because the final amendment reduces compliance burdens, door-to-door sellers who are also small entities should not face any significant economic hardship as a result of the final amendment. At most, a small entity may face costs associated with training and educating sellers about the amendment to the Rule, but these costs would likely be modest and outweighed by the reduced burden for those entities that will no longer need to provide Notices of Cancellation for certain sales. Accordingly, the Commission certifies that the final amendment will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The final amendment, therefore, is exempt from the final regulatory flexibility analysis requirements of section 604, 5 U.S.C. 604.27 Further, this document serves as notice to the Chief Counsel for Advocacy of the Small Business Administration of the agency's certification of no significant impact.

For similar reasons, a regulatory analysis under Section 22 of the FTC Act is not required. See 15 U.S.C. 57b-3(a)(1). The Commission believes the amendments will have no significant economic or other impact on the economy, prices, or regulated entities or consumers.

²⁷ 5 U.S.C. 605(b).

IV. Paperwork Reduction Act

The Paperwork Reduction Act (“PRA”), 44 U.S.C. 3501 et seq., requires government agencies, before promulgating rules or other regulations that require “collections of information” (i.e., recordkeeping, reporting, or third-party disclosure requirements), to obtain approval from the Office of Management and Budget (“OMB”). The amendment will not impose collection requirements, so OMB approval is unnecessary.

V. Conclusion

For the reasons described above, the Commission has determined to increase the Rule’s exclusionary amount with respect to door-to-door sales that are made away from a buyer’s residence. The Cooling-Off Rule will continue to apply to these types of transactions, however, the exclusionary limit will be increased to \$130. Increasing the exclusionary limit for these types of sales should eliminate compliance burdens for various types of vendors, who typically engage in low-dollar amount transactions, but not high-pressure sales tactics that are designed to keep consumers’ captive. At the same time, the record supports leaving the \$25 exclusionary limit in place for door-to-door sales made within consumers’ homes.

List of Subjects in 16 CFR Part 429

Sales made at homes or at certain other locations; Trade practices.

For the reasons stated in the preamble, the Federal Trade Commission amends 16 CFR part 429 as follows:

PART 429 – RULE CONCERNING COOLING-OFF PERIOD FOR SALES MADE AT HOMES AND OTHER LOCATIONS.

1. The authority citation for part 429 continues to read as follows:

Authority: Sections 1-23, Federal Trade Commission Act, 15 U.S.C. 41-58.

2. Amend § 429.0, by revising paragraph (a) introductory text to read as follows:

§ 429.0 Definitions

* * * * *

(a) *Door-to-Door Sale*—A sale, lease, or rental of consumer goods or services in which the seller or his representative personally solicits the sale, including those in response to or following an invitation by the buyer, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller (e.g., sales at the buyer's residence or at facilities rented on a temporary or short-term basis, such as hotel or motel rooms, convention centers, fairgrounds and restaurants, or sales at the buyer's workplace or in dormitory lounges), and which has a purchase price of \$25 or more if the sale is made at the buyer's residence or a purchase price of \$130 or more if the sale is made at locations other than the buyer's residence, whether under single or multiple contracts. The term *door-to-door sale* does not include a transaction:

* * * * *

By direction of the Commission.

Donald S. Clark
Secretary.

Note: The following will not appear in the Code of Federal Regulations:

Concurring Statement of Commissioner Julie Brill

Federal Trade Commission Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations (the “Cooling-Off Rule”)

January 6, 2015

Today, the Commission announces that it has amended the Commission’s Cooling-Off Rule.¹ Through this action, the Commission retains the exclusionary limit for some “door-to-door” sales, but raises it for others. I write separately to voice my strong support for retaining the exclusionary limit for sales in consumers’ homes; to note my skepticism, based on the record before us, of the need to raise the exclusionary limit for sales in a seller’s transient location; and, as a result, to strongly encourage states to engage in detailed fact finding about their own local conditions before raising any exclusionary limits under their own state cooling-off laws and rules.

The Cooling-Off Rule was designed to prevent unfair and deceptive practices in sales that occur outside a seller’s permanent place of business.² The Cooling-Off Rule uses the nomenclature “door-to-door” sales to describe the sales that it covers, and includes within the definition of “door-to-door” sales both sales in a consumer’s home as well as sales at a seller’s transient location.³ Sales in consumers’ homes and at a seller’s transient location have long raised consumer protection concerns, as some sellers employ deceptive and unfair practices, including high pressure sales tactics; misrepresenting the quality of goods; and placing

¹ *Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations*, 16 CFR part 429.

² *Id.*; see also, *Cooling-Off Period for Door-to-Door Sales, Trade Regulation Rule and Statement of Its Basis and Purpose*, 37 FR 22933, 22937 (Oct. 26, 1972).

³ 16 CFR 429.0 (a) (definition of “Door-to-Door Sale”).

inappropriate roadblocks to obtaining refunds, including simply disappearing before the consumer realizes that he or she has been scammed.⁴ The Cooling-Off Rule's primary mechanism for protecting consumers from such unscrupulous sales tactics is to give consumers who purchase in these locations three business days to cancel sales of \$25 or more.⁵ Under the Cooling-Off Rule, covered sellers must provide consumers with written and oral notice of this right to cancel.⁶

The \$25 exclusionary limit established in the Cooling-Off Rule has not changed since the Rule was first promulgated in 1972. In January 2013, following completion of a regulatory review of the Rule, the Commission sought public comment on a proposal to raise the exclusionary limit for all sales that qualify as "door-to-door sales" from \$25 to \$130, to account for inflation since the Rule was issued.⁷ As further explained in the January 2013 Federal Register Notice, the Commission derived the \$130 figure by calculating inflation using the U.S. Department of Labor's Consumer Price Index for all-urban consumers ("CPI-U").⁸

4 See *Cooling-Off Period for Door to Door Sales, Trade Regulation Rule and Statement of Its Basis and Purpose*, 37 FR at 22937 ("The complaints of consumers regarding door-to-door salesmen fall within five basic headings. These are: (1) Deception by salesmen in getting inside the door; (2) high pressure sales tactics; (3) misrepresentation as to the quality, price, or characteristics of the product; (4) high prices for low-quality merchandise; and (5) the nuisance created by the visit to the home by the uninvited salesmen").

5 16 CFR 429.1(a).

6 16 CFR 429.1(a), (b), (e).

7 The Commission initiated the regulatory review in 2009, seeking public comment to determine whether the rule should be retained, modified, or rescinded. *Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations*, Request for Public Comment, 74 FR 18170 (Apr. 21, 2009). After the Commission decided to retain the Rule, it sought public comment on a proposal to an increase of the exclusionary limit. *Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations*, Proposed Rule Amendment, Request for Public Comment, 78 FR 3855 (Jan. 17, 2013).

8 See 78 FR at 3869, n.69 ("The average value of the CPI-U for 2010 was 218.056, while the average value for 1972 was 41.8.... Dividing 218.056 by 41.8 gives a value of 5.217 and multiplying this figure by \$25 gives a value of \$130.43. Rounding down to \$130 yields the proposed new minimum dollar amount").

The Commission received thirty-three comments in response to its proposal to raise the exclusionary limit to \$130 for all “door to door” sales. As discussed more fully below, four commenters supported a blanket increase of the exclusionary limit to \$130.⁹ The vast majority of commenters – twenty-eight – opposed the proposed blanket increase to \$130. These twenty-eight commenters cited a variety of reasons for their opposition. Most of them expressed general concerns about the need for protections against high pressure and predatory sales practices.¹⁰ The Massachusetts Attorney General, the California Consumer Affairs Association, and several chapters of the Better Business Bureau (“BBB”) cited serious concerns about deceptive and high pressure sales tactics by traveling salespeople for transactions well under \$130.¹¹ Some commenters stated that, while the price of goods and services may have risen with inflation, \$25 is still a significant amount of money for consumers.¹²

9 The Direct Selling Association (“DSA”) and Mike Shaw Auto Group, as well as two individual commenters supported an increase in the exclusionary limit. DSA stated that, because of inflation, the Rule now covers lower cost items that it was not originally intended to cover. It also cited concerns regarding the compliance costs for sellers of lower cost goods. DSA Comment at 2-3. Mike Shaw Auto Group suggested that the amount be rounded up to the nearest \$50. Mike Shaw Auto Group Comment at 1. Another commenter suggested that the amount be raised to \$200 to account for future inflation, while the remaining commenter expressed support for the FTC’s proposed increase. BELO KELLAM [sic] Comment at 1, Susan Rothacker Comment at 1.

10 Some commenters raised general concerns about deceptive practices. *See, e.g.*, Frances Goff Comment at 1 (opposed to raising the minimum based on the persistence of dishonest sales tactics). Others raised more specific concerns, such as sellers who target senior citizens, or predatory sales practices in multilevel marketing. Six commenters raised concerns with multilevel marketing organizations (“MLMs”), whose start-up kits can easily cost below the FTC’s proposed threshold. For example, Stacie Bosley, an economist and assistant professor at Hamline University, commented on the role of “urgency” in multilevel marketing recruitment and stated that the rapid rise in MLMs since the establishment of the Rule is a new development suggesting that the exclusionary limit should remain unchanged. Stacie Bosley Comment at 1-2.

11 The Massachusetts Attorney General, for instance, stated that \$25 was not an insignificant amount, especially in door-to-door sales where economically disadvantaged individuals and senior citizens are often targeted in their homes. Massachusetts AG Comment at 1-2. The California Consumer Affairs Association (“CCAA”) similarly believes that increasing the Cooling-Off Rule’s minimum to \$130 would remove crucial safeguards to reduce abusive sales practices by door-to-door sellers, who often target senior citizens, new immigrants, and low-income families. CCAA Comment at 1. Several BBB chapters expressed concern that a raise in the threshold to \$130 would eliminate needed protections for most door-to-door sales, including those that target vulnerable consumers at home. BBB of Southern Colorado Comment at 1; BBB of North Alabama Comment at 1; BBB of Louisville, Kentucky Comment at 1; BBB of Utah Comment at 1.

12 *See, e.g.*, Susanna Perkins Comment at 1, noting that “most US households have seen their incomes stagnate.”

After consideration of commenters' concerns, the Commission today has decided to (1) retain the \$25 limit for door-to-door sales made at a buyer's residence, and (2) amend the Rule to increase the limit from \$25 to \$130 for sales that occur at transient locations.

I fully support the retention of the \$25 exclusionary limit for sales in consumers' homes. While the expansion of Internet marketing has changed the business model of many direct sales companies, door-to-door sales continue to be a concern, especially for consumers who are the targets of aggressive, high pressure, or deceptive sales tactics in their own homes. AARP and the BBB have identified in-home door-to-door sales as being among the top scams targeting senior citizens.¹³ The BBB continues to receive consumer complaints about door-to-door sales of magazines, cleaning products, meat, photography services, and cosmetics – all items that typically fall below \$130.¹⁴ In 2013, the BBB received over a thousand complaints concerning door-to-door magazine sales alone.¹⁵ As consumers continue to be approached in their homes with offers for products under \$130, the Commission correctly recognizes the significance that lawmakers, advocates, and consumers place on retaining the \$25 limit for sales that occur in consumers' homes. I am not persuaded, however, of the need to raise the exclusionary limit for transient sales. The four commenters who supported an increase in the exclusionary limit – the Direct Selling Association (“DSA”), Mike Shaw Auto Group, and two other individual commenters – did not distinguish between in-home and transient sales, and lodged only general

13 Sid Kirchheimer, *6 Common Door-to-Door Scams*, AARP BULLETIN, Oct. 29, 2012, <http://www.aarp.org/money/scams-fraud/info-10-2012/common-door-to-door-scams.html>; *BBB Warns of Scams That Target Seniors*, BETTER BUSINESS BUREAU SERVING WISCONSIN, May 7, 2014, <http://www.bbb.org/wisconsin/news-events/news-releases/2014/05/bbb-warns-of-scams-that-target-seniors/>.

14 See BETTER BUSINESS BUREAU, 2013 COMPLAINT AND INQUIRY STATISTICS, U.S. STATISTICS SORTED BY INDUSTRY, available at <http://www.bbb.org/globalassets/local-bbbs/council-113/media/complaint-stats/us-stats-industry-2013.pdf>; see also Massachusetts AG Comment at 2.

15 BETTER BUSINESS BUREAU, 2013 COMPLAINT AND INQUIRY STATISTICS, U.S. STATISTICS SORTED BY INDUSTRY (reporting 41,851 consumer inquiries and 1,149 consumer complaints concerning door-to-door magazine sales).

complaints about the rule, including that, due to inflation, the Rule now covers lower cost items that it was not originally intended to cover.¹⁶ With respect to the auto sales that the Mike Shaw Auto Group might be concerned about, the Cooling-Off Rule already exempts auto tent sales and other sales in transient locations.¹⁷ The only commenter who mentioned specific concerns about the \$25 exclusionary limit for transient sales did so in response to the Commission's 2009 Federal Register Notice seeking comments on whether to retain the rule, raising a concern about transient sales as they relate to perishable food items.¹⁸ This commenter suggested that sellers of food items in transient locations be exempted from the Cooling-Off Rule, similar to the Rule's exemption for arts and crafts shows.¹⁹ I believe the concerns of this commenter could have been addressed in a more targeted and effective manner just as the commenter suggested, through an exemption from the federal rule sales of perishable items. Some states take this approach, and exclude perishable items from coverage of its cooling-off rule.²⁰

In contrast, among those commenters who opposed the increase in the exclusionary limit, some specifically raised concerns about transient sales.²¹ As for the remaining commenters who

16 DSA Comment at 2-3; Mike Shaw Auto Group Comment at 1; BELO KELLAM [sic] Comment at 1; Susan Rothacker Comment at 1.

17 16 CFR 429.3(a) (exempting from the rule "sellers of automobiles, vans, trucks or other motor vehicles sold at auctions, tent sales or other temporary places of business, provided that the seller is a seller with a permanent place of business).

18 Fabian Seafood Company Comment at 1 (June 13, 2009).

19 In addition to the exclusion for motor vehicle tent sales, the federal Cooling-Off Rule also excludes "sellers of arts or crafts sold at fairs or similar places." 16 CFR 429.3(b).

20 *See, e.g.*, N.M. STAT. ANN. section 57-12-21(C)(2) (New Mexico's cooling-off rule's definition of covered consumer goods and services are those "other than perishable goods or agricultural products").

21 Two commenters who opposed the increase in the exclusionary limit specifically referenced concerns about transient sales. *See* Rochelle Mezzano Comment at 1 (citing concern about the difficulty in obtaining recourse from transient sellers who do not honor the Cooling-Off Rule based on her experience in purchasing an item while on a cruise ship); Alan Lunin Comment at 1 (citing concern that \$25 is a significant amount of money for consumers who can be targeted "anywhere, including outside the grocery store or inside church").

objected to an increase in the exclusionary limit, it is not clear whether they were raising concerns about only in-home sales, or both in-home and transient sales. Many of them employed the term “door-to-door sales” in discussing their concerns.²² However, these commenters could simply (and correctly) have been employing the federal rule’s definition of “door-to-door” sales, which incorporates both in-home sales and sales in transient locations under the umbrella of “door-to-door” sales,²³ rather than attempting to limit their concerns to in-home sales.

As the Commission correctly notes in today’s Federal Register Notice of its decision, the federal Cooling-Off Rule does not preempt state laws or rules to the extent that such rules are not “directly inconsistent” with the federal Cooling-Off Rule.²⁴ More protective state laws – those that have lower exclusionary limits, no exclusionary limits, or broader coverage of the types of sales that qualify for the cooling-off period and notice requirements of their rules – are not “directly inconsistent” with the federal rule, and so are not preempted.²⁵

Indeed, states have long had their own cooling-off rules that in many cases provide consumers with protections greater than those provided by the federal rule. Forty-nine states and the District of Columbia have a state cooling-off rule.²⁶ Some states, like Arizona,²⁷ North

²² See Mike A. Jacques-O’Gorman Comment at 1-2; Adam Offenbecker Comment at 1; Gowen Consulting Comment at 1.

²³ See *supra* note 3.

²⁴ See *Trade Regulation Rule Concerning Cooling-Off Period for Sales Made at Homes or at Certain Other Locations*, Rule Amendment, ____ FR ____, at ____ (Jan. __, 2015) (citing 16 CFR 429.2).

²⁵ *Id.*

²⁶ Washington is the only state with no law or regulation providing a cooling-off rule, and so it relies entirely on the federal rule. Washington has laws in place that give consumers a right to cancel contracts for specific types of goods or services, including camping club and health club memberships, credit repair services, business opportunities, hearing aid purchases, retail installment plans, telemarketing sales, timeshare purchases, and vocational school enrollment. See *Consumer Issues A-Z: Cancellation Rights*, WASHINGTON STATE OFFICE OF THE ATTORNEY GENERAL, <http://www.atg.wa.gov/consumerissues/cancellationrights.aspx#DoorToDoorSales> (last visited Dec. 22, 2014).

Carolina,²⁸ and Illinois,²⁹ cover only sales in consumers' homes, with exclusionary limits ranging from zero to \$25. Most state laws cover both in-home sales and sales at transient locations, and once again these exclusionary limits range from zero to \$25.³⁰ New Hampshire, with \$150 minimum exclusionary limit, is the only state with a dollar limit above \$25.³¹

With respect to enforcement, states have been much more active in enforcing their state rules than has the Commission.³² This is no doubt due at least in part to the fact that the states are closer to consumers who suffer from many of the unscrupulous activities involving sales in the home and in transient locations.

Because I am not persuaded that the federal Cooling-Off Rule's long-standing \$25 exclusionary limit on transient sales should be raised to \$130, and because I find there is convincing evidence on the overall need to continue protecting consumers through cooling-off

27 ARIZ. REV. STAT. ANN. section 44-5001.

28 N.C. GEN. STAT. ANN. sections 25A-38, 39.

29 815 ILL. COMP. STAT. ANN. 505/2B.

30 For instance, Alaska provides for a \$10 threshold and a five-day cooling-off period, ALASKA STAT. ANN. section 45.02.350; Vermont provides for a \$5 threshold, VT. STAT. ANN. tit. 9, section 2451a (exempting purchases of under \$25 where there is no contract or receipt); Oregon has no dollar limit, OR. REV. STAT. ANN. sections 83.710, 720; and New York has a \$25 limit, N.Y. PERS. PROP. LAW SECTION 426.

31 N.H. REV. STAT. ANN. section 361-B:1.

32 See, e.g., Second Am. Compl. at ¶¶ 11-16, 34-36, *State of West Virginia v. Quick Silver Restoration, LLC, et al.*, No. 14-C-1952 (W. Va. Cir. Ct. filed Nov. 6, 2014) (alleging that a roofing and home improvement company engaged in high pressure door-to-door solicitations that violated several consumer protection laws and regulations, including the state and federal cooling-off rules; Compl. at ¶ 1, *State of Vermont v. Terry*, No. 570-9-14 Wncv (Vt. Super. Ct. filed Sept. 24, 2014) (alleging that a door-to-door meat salesman violated the state's Consumer Protection Act by failing to notify consumers of their three-day right to cancel, misleading consumers regarding the price and guarantee on the meat, failing to disclose material information to the consumer, and selling meat without a required license); Compl., *Commonwealth of Virginia v. KLMN Readers Servs. Inc.*, No. CL13002796-00 (Chesapeake Cir. Ct. filed Nov. 25, 2013) (alleging that a door-to-door magazing company violated Virginia's Consumer Protection and Home Solicitation Sales Acts) (default judgment granted Sept. 24, 2014). In contrast, the last time the Federal Trade Commission employed the federal Cooling-Off Rule in an enforcement action was nearly 15 years ago. Compl., *F.T.C. v. College Resource Mgmt., Inc. et al.*, No. 3-01CV0828-G (N.D. Tex. May 1, 2001) (alleging, *inter alia*, that a purported college financial services company violated Section 5 of the FTC Act and the Cooling-Off Rule in connection with its deceptive practices in financial aid sales seminars held at hotels or in banquet rooms).

rules, I urge state policy makers, law enforcement officials, and regulators to *not* interpret today's amendment to the federal Cooling-Off Rule as a signal that they should follow suit and raise the exclusionary limit of their respective cooling-off rules for sales in transient locations. Indeed, the often highly localized nature of potentially deceptive practices involving sales in transient locations puts states in the best position to determine the wisdom of raising their own exclusionary limits for sales in transient locations. I strongly encourage any state that may consider following the course of action taken by the Commission today to engage first in a more focused effort to gather evidence about potentially unscrupulous activities involving transient sales in their jurisdictions.

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